plaintiff not liable for the amount in controversy. *O'Leary* v. *City of Glens Falls* (1910), — N. Y. —, 93 N. E. 513.

The Appellate Division rendered judgment for the plaintiff on the ground that, since he was the owner in fee merely to the boundary of the highway, none of the territory embraced in the intersection of the streets "fronted on" his property, and that therefore the municipality should bear the expense of the paving of the intersection. The Court of Appeals in reviewing the decision of the lower court criticizes this holding as amounting to an inferential conclusion that where the abutting owner owns to the center of the highway, he would be chargeable with the expense in accordance with the contention of the defendant here. The Court of Appeals furthermore prescribes a method of assessing the expense of paving the intersection whereby the amount of the tax assumed by the municipality is to be deducted from the gross sum that the pavement cost, and the balance thereof assessed pro rata upon the lands of all the abutting owners according to the foot frontage of their respective lots. This was the rule adopted in *Conde* v. *City of Schenectady*, 164 N. Y. 258, 266, 58 N. E. 130, 132; see also *Smith* v. *City of Buffalo*, 159 N. Y. 427, 432, 54 N. E. 62, 63. It would seem that this method of assessment might be open to criticism on the ground that it still throws a burden on the plaintiff together with all the abutting land owners in regard to an improvement which is not "in front of" his or their property and it is difficult to see why the city should not bear the expense of paving the intersection in view of the fact that the intersection is in front of city property, the fee in all the streets being in the city. In answer to this argument it appears that the general custom in the State of New York is not to assess public streets even for local improvements: *City of Schenectady* v. *Trustees of Union College*, 144 N. Y. 241; *People ex rel. Davidson* v. *Gilon*, 126 N. Y. 147; *People ex rel. Mayor, etc.* v. *Board of Assessors*, 111 N. Y. 505; *Mansfield* v. *Lockport*, 24 Misc. Rep. 25, 36. For a contrary custom see the following Illinois cases: *Cramer* v. *Charleston*, 52 N. E. 73, 176 Ill. 507; *St. John* v. *East St. Louis*, 50 Ill. 92.

NAVIGABLE WATERS—ACCESS TO WHARF—INTERFERENCE.—Defendant lumber company owning upland purchased from the state tide lands out to deep water, no harbor line having been established, and built a wharf at the edge of deep water. A railroad company subsequently built a drawbridge adjoining the wharf so close that the draw could not be opened while a vessel was lying at the wharf. Action is brought by the railroad company against the lumber company to enjoin the interference with the opening and closing of the drawbridge. *Held*, (RUDKIN, C. J., and GOSE, J., dissenting) defendant's rights to have vessels load at the wharf could not be enjoined by the railroad without compensation, even though the bridge had the sanction of the state and federal authorities. *Northern Pac. Ry. Co.* v. *S. E. Slade Lumber Co.*, (1910), — Wash. —, 112 Pac. 240.

A dissenting opinion by the Chief Justice is based on the theory that as against the sovereign the individual has no property nor property rights in public navigable waters; that after the United States has consented to the

building of such a drawbridge over a navigable stream, the owner of private property abutting on the stream cannot claim compensation. The majority opinion maintains that the lumber company acquired a right of access to its wharf, over the navigable waters, which cannot be taken away without compensation. Herein the court decides against the weight of authority, and cites no cases of weight to maintain its decision. This right to the navigable stream, which the court declares to be private, is a distinctly public right, which the adjoining land owner exercises subject to public control. Streams of any size, though entirely within one state and navigable only for barges and small steamboats, are under the control of the government of the United States. *Gilman* v. *Philadelphia,* 3 Wall. 713; *Cardwell* v. *Am. Bridge Co.,* 113 U. S. 205; *The Daniel Ball,* 10 Wall. 557. If Congress declares a bridge to be lawful, neither the State legislature nor the State court can declare it unlawful. The judgment of Congress is conclusive, and shall not be questioned by any court. *The Clinton Bridge,* 10 Wall. 454; *State* v. *Wheeling Bridge Co.,* 18 How. 421; *Miller* v. *Mayor,* 109 U. S. 385. The right of navigation in a tide-water channel is not an individual private property right, protected from governmental action by the constitutional provision prohibiting the taking of private property without just compensation. It is a public right only, which may be abridged or extinguished at the pleasure of the sovereign acting for the public, and without making compensation to those who were wont to use it. The right is always subject to be thus extinguished, and individuals should not assume it to be permanent. If any action by the sovereign, in exercising the right of control causes damage to the owner of property adjoining the navigable stream, it is a case of damnum absque injuria. *Frost* v. *Wash. Co. R. Co.,* 96 Me. 76, 51 Atl. 806, 59 L. R. A. 68; *Miller* v. *Mayor,* 109 U. S. 385; *Pound* v. *Turck,* 95 U. S. 459; *Escanaba Co.* v. *Chicago,* 107 U. S. 678; *Brooks* v. *Improvement Co.,* 82 Me. 17. In the principal case, the dissenting opinion represents the weight of reason and of authority.

NEGLIGENCE.—DUTY TO INDEPENDENT CONTRACTOR.—Defendant engaged in removing a rock bluff incident to the construction of its railroad, contracted with plaintiff to drive a tunnel in the face of the bluff in which to explode powder. A heavy blast in another tunnel brought down a quantity of rock immediately in front of plaintiff's tunnel. Plaintiff, at the direction of defendant's foreman, commenced to remove the debris, but being alarmed by the fall of a rock stopped work and reported such fact to defendant's foreman who said he would make the bluff safe. Plaintiff returned to work the next morning, after the foreman had assured him that he had caused the wall and slope to be made safe, and while so working was struck by a falling rock and injured. *Held,* that even if plaintiff was an independent contractor, and not an employe, defendant was liable for an injury caused by negligence in not making the place safe. *Gibson* v. *Chicago, M. & P. S. Ry. Co.* (1911), — Wash. —, 112 Pac. 919.

With few exceptions the cases agree in holding that premises upon which an independent contractor is required to labor for the benefit of the owner